

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

UNITED STATES OF AMERICA, §
§
Plaintiff, § § Criminal No. 2:18-CR-054-D
VS. §
§
ROBIN JEANETTE MARKS, §
§
Defendant. §

MEMORANDUM OPINION
AND ORDER

The court denies defendant Robin Jeanette Marks's ("Marks's") March 9, 2023 petition for relief pursuant to First Step Act section 404 (Fair Sentencing Act) & Amendment 750.

Marks pleaded guilty to conspiracy to distribute and possess with intent to distribute 500 grams or more of cocaine, in violation of 21 U.S.C. § 846 (21 U.S.C. § 841(a)(1) & (b)(1)(B)(ii)). On July 25, 2019 the court sentenced her to 151 months' imprisonment to be followed by 5 years of supervised release. Marks now moves for a sentence reduction under the Fair Sentencing Act of 2010 ("FSA"), the First Step Act of 2018 ("First Step Act"), and Amendment 750 to the United States Sentencing Guidelines. The government opposes Marks's petition.

In 2018, the First Step Act was enacted to remedy a gap left open by the FSA and various amendments to the United States Sentencing Guidelines relative to sentences imposed for certain crack cocaine offenses. *United States v. Batiste*, 980 F.3d 466, 469 (5th Cir. 2020). Section 404 of the First Step Act gives district courts "the discretion to retroactively apply the [FSA] to reduce a prisoner's sentence for certain covered offenses." *Id.* at 470. A defendant is eligible for a § 404 sentence reduction under the First Step Act if: (1) she committed a "covered offense"; (2) her sentence was not previously imposed or reduced pursuant to the FSA; and (3) she did not previously

file a motion under the First Step Act that was denied on the merits. *Id.* A “covered offense” is “a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the [FSA], that was committed before August 3, 2010.” First Step Act of 2018, Pub. L. No. 115-391, § 404(a), 132 Stat. 5194, 5222 (2018).

As the government points out in its response, Marks was indicted in May 2018 based on conduct that occurred earlier that year. Because her offense did not occur before August of 2010 and because she was not sentenced until 2019, Marks was not convicted of a “covered offense” within the meaning of § 404 of the First Step Act. Accordingly, Marks is not eligible for a sentence reduction, and her petition must be denied.

SO ORDERED.

September 15, 2023.



SIDNEY A. FITZWATER
SENIOR JUDGE